Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

LEE RONALD AND JUDITH ANN DAHMER,
Petitioner

V.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

LEE RONALD and
JUDITH DAHMER
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44 pp

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED FOR REVIEW

What constitutes "due process" in the assessment and collection of income tax when employees of the Government, acting judicially, use deceit, fraud and misrepresentation to assess and collect said income tax and evidence of said conduct is discovered after the issues have been adjudicated and property seized and sold for the payment of taxes whereby the assessment and judgment was procured by fraud?

IN THE

SUPREME COURT OF THE UNITED STATES

United States v Lee Ronald and Judith Ann Dahmer
(8th Cir. – No. 99-3499)

CERTIFICATE OF INTERESTED PERSONS &

CORPORATE DISCLOSURE STATEMENT

Pursuant to Local Rule 26.1-1 et seq. of this Court, it is hereby certified that the following persons and entities have an interest in the outcome of this case or have participated as attorneys or as judges in the adjudication of this case:

United States of America - Appellee
Lee Ronald Dahmer - *pro se* Appellant
Judith Ann Dahmer – Pro Se Appellant
Bluebird Trust, Appellant
Cardinal Trust, Appellant
Ron Richmond, Defendant
Pamela Richmond, Defendant
Gary A. Fenner - U. S. District Court Judge SW D. AL Allen,
Ann B. Durney, Attorney Tax Division, Tax Div., USDJ
Carol Barthel, Attorney, Tax Div. USDJ
Stephen L. Hill, Jr., United States Attorney
Loretta C. Argrett, Assistant Attorney General
Carl J. Tierney, Trial Div, USDJ

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C.J.S., Fraud $ 16b; 23 Am.Jur., Fraud and Deceit $ 80

Webster's Dictionary of Law, 1996

Published Standards, Job Description for Revenue Officers

United States General Accounting Office, Report to the Commissioner of Internal Revenue

Tax Policy and Administration: 1993 Annual Report on GAO Tax-Related Work (Letter Report, 03/31/94, GAO/GGD-94-82)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

APPENDIX A

United States Court of Appeals for the Eighth Circuit, Case No. 01-1363, affirmed US District Court

APPENDIX B

US District Court for the Western District of Missouri, Civil Action 97-5122-CV-SW-4, Order denying request for bill of review

JURISDICTION

The jurisdiction of this court is invoked under title 28 section 1254 (1) and section 1291 of the United States Codes.

IN THE

SUPREME COURT OF THE UNITED STATES

CONSTITUTIONAL PROVISIONS

Fifth Amendment, the right to due process, that which our founding fathers wanted to protect with the deepest principles of what is fair and right and just. These rights are provided under the provisions described in **"procedural due process"** and **"substantive due process".**

Fourteenth Amendment, the right and guarantee of **"due process of law",** the standards of fairness and justness found within the Fifth Amendment's clause. Congress has mandated that all administrative remedies must be exhausted before a taxpayer can seek "due process" judicially. Therefore, the Fourteenth Amendment is crucial in guaranteeing "Procedural Due Process".

STATEMENT OF CASE

This cause is before the court on a Request for a Bill of Review, for after discovered fraud committed by the Government, preventing the Dahmers from fully and fairly presenting their case and depriving them of their Constitutional right to due process, and preventing the judicial mechanisms from properly insuring justice for all.

This case is one of three cases presented to the United States Supreme Court requesting a Writ of Certiorari on the same issue of after discovered fraud committed by the Government. All of these cases have had the fraud uncovered by the same Forensic Accountant.

THE FOURTEENTH AMENDMENT PROCEDURES IN TAXATION

This case does not question the necessity or the Constitutionality of the income tax. This case questions what constitutes due process in the assessment and collection of income tax when employees of the Government, acting judicially, use deceit, fraud and misrepresentation to assess and collect said income tax and evidence of said conduct is discovered after the issues have been adjudicated and property seized and sold for the payment of taxes whereby the assessment and judgment was procured by fraud.

Exactly what "due process" requires in the assessment and collection of general taxes has never been decided by the Supreme Court. There are different kinds of taxes, some of which there is no question as to what the requirements of due process would be. However, where there are numerous and complex statutory rules and a Revenue Officer is acting judicially in applying the laws and the outcome is based upon those decisions the taxpayer has a right to be heard. Especially when a taxpayer challenges the assessment based upon fraud or corruption by the Government

FIFTH AMENDMENT
AND
FOURTEENTH AMENDMENT

The Dahmers believe their right to due process has been violated and continues to be in serious jeopardy in their dispute with the Internal Revenue Service (IRS). They believe that if the IRS had not violated the Federal Statutes; and had not lied to the courts below about the true assessment date (23C date); and had not violated the integrity of the master file system (which is programmed to comply with the statute of limitations), then their personal assets would not have been seized; and they would not have been deprived of their Constitutional Rights; and the judicial machinery would have functioned to insure justice was served and would not have to plead their case to the United States Supreme Court.

The Dahmers rely upon several cases decided by the United States Supreme Court in support of their request to grant relief in the form of a "Bill of Review" or other relief as the court sees appropriate, against a judgment and subsequent collection action; based upon the newly discovered evidence that the IRS procured these acts through deceit, fraud and misrepresentation, acting judicially both in and out of the courtroom, under the color of law. The following United States Supreme Court cases are cited in this brief.

Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944)

Klapprott v. United States, 335 U.S. 601, 614-15 (1949)

Goldberg v. Kelly, 397 U.S. 254 (1970)

The Dahmers believe the instant case demonstrates a need for the United States Supreme Court to decide issues

that constitute due process in this case.

The United States Supreme Court has preserved and protected the constitutional rights of citizens, especially in circumstances where the Government's action seriously harm the citizens.

The Dahmers rely upon *Goldberg v. Kelly, 397 U.S. 254 (1970)* in illustrating these principles. Even though the issues in the instant case involve the assessment and collection of taxes and the Goldberg case does not, both cases rely upon questions of facts and depend upon documentary evidence to show that the Government's case is untrue. Due process in the instant case is especially crucial because the Government not only acted unlawfully but has committed fraud to conceal the conduct.

"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. E. g., ICC v. Louisville & N.R. Co., 227 U.S. 88, 93-94 (1913); Willner v. Committee on Character & fitness, 373 U.S. 96, 103-104 (1963). What we said in (397 U.S. 254, 270) Greene v. McElroy, 360 U.S. 474, 496-407 (1959), is particularly pertinent here:

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. W e have formalized these protections in the requirements of confrontation and cross-examination They have ancient roots. They find expression in the sixth Amendment. This Court has been zealous to

protect these rights from erosion. It has spoken out not only in criminal cases, But also in all types of cases where administrative Y actions were under scrutiny."

The Dahmers have been stripped of their "Constitutional Right to Due Process" in order to prevent the discovery of deceitful and fraudulent conduct by employees of the IRS.

PUBLIC INJURY

Tax assessments enjoy the "presumption of correctness" and the IRS was in control of the evidence needed to rebut said presumption. By reason of the nature of the relationship of Revenue Officers to the judicial process, the Court must require the highest degree of candor and good faith and must deal with them in the spirit of trust and confidence. Even the slightest breach of trust must be dealt with in favor of the taxpayer in order to protect the public from Government abuse or injury.

This case, as well as others, points to serious concerns of public injury at the ands of the IRS.

Reports from the Government Accounting Office (GAO) and the wide spread abuse of taxpayers, exposed in the Senate Finance Committee Hearings that lead the IRS Restructuring and Reform Act of 1998 are demonstrated in the instant case.

"GAO reported that IRS had an accounts receivable inventory totaling about $111 billion at the end of September 1991. IRS estimated that nearly 75 percent of that amount cannot be collected because either the records are inaccurate and taxpayers do not actually owe the money, IRS cannot locate the taxpayers, or the taxpayers cannot pay."

As part of it's of IRS' fiscal year 1992 financial statements pursuant to the Chief Financial Officers Act of 1990 (P.L. 101-576), GAO reviewed IRS' accounts receivable. GAO's gross receivables changed little during

the next 3 months, GAO believed that an overstatement also existed in the balance IRS reported for September 30, 1991.

GAO said that IRS overstated it gross receivables primarily because it included duplicate and insufficiently supported assessments that it had recorded as a part of its efforts to identify and collect taxes due. GAO noted that these and many other erroneous assessments were not valid receivables." "As a part of its audit of IRS' fiscal year 1992 financial statements, GAO reviewed computer controls.

GAO identified two areas of significant weakness in the general controls over IRS computer systems that have increased the risk of fraud and diminished the reliability of IRS' financial management information:

IRS did not adequately restrict access to taxpayer data to only those computer support staff who needed it and did not adequately monitor the activities of thousands of employees who were authorized to read and change taxpayer files. As a result, IRS could not be certain that the confidentiality and accuracy of this data were protected and that the data were not manipulated for purposes of personal gain. GAO reported that IRS internal reviews have identified instances where IRS employees (1) manipulated taxpayer records to generate unauthorized refunds, (2) accessed taxpayer records to monitor the processing of fraudulent returns, and (3) browsed taxpayer accounts that were unrelated to their work, including those of friends, relatives, neighbors, and celebrities.

Controls did not ensure that IRS used only authorized versions of its computer programs. This is a systemic problem that permits programmer to introduce unauthorized software changes either inadvertently or deliberately and, thus, increases the risk that taxpayer and other data may not be processed as intended by management policies." See Tax Policy and Administration: 1993 Annual Report on GAO Tax-Related Work (Letter Report, 03/31/94, GAO/GGD-94-82).

BACKGROUND

On January 17, 1991, the Dahmers (Defendants) executed a Form 872, granting the Government (Plaintiff) an extension of the Assessment Statute Expiration Date until December 31, 1991.

On January 22, 1991, the IRS sent the Dahmers an executed copy of the form 872 executed by the Government on January 21, 1991. This Form 872 extended the assessment statute expiration date until December 31, 1991.

On April 30, 1992, the IRS issued a "statutory notice of deficiency", to the Dahmers, determining a deficiency for 1986 for $48,395.00 and 1987 for $54,303.00. This "statutory notice of deficiency" was barred by the statutes at the time it was issued.

On April 30, 1993, the Dahmers and the Government entered into an agreement whereby the parties agreed that there is no tax liability for 1986 and there is a tax liability for 1987 in the amount of $54,303.00

On May 19, 1993, the stipulated decision was entered by the Tax Court.

On December 2, 1997, the IRS filed a complaint against the Dahmers to reduce to judgment an unpaid assessed balance of tax liability for tax year 1987 that was alleged to have been assessed on June 25, 1993.

On February 12, 1998, the Dahmers, responding as Pro Se, answered the IRS' complaint.

On July 22, 1999, the Court Entered a judgment in favor of the IRS for federal income taxes for 1987 in the sum $144,935.49, plus accrued interest after March 2, 1998.

On September 10, 1999, the Dahmers filed a timely notice of appeal.

On August 15, 2000, the Court of Appeals for the Eighth-Court affirmed the District Court's decision.

In August 2000, the Dahmers learned of a Forensic

Accountant who could interpret the transactions in a master file. The Dahmers contacted her for assistance.

On October 3, 2000, as a result of the analysis by Victoria Osborn, Forensic Accountant, the Dahmers filed a "Request for a Bill of Review" in the District Court.

On October 20, 2000, the IRS responded in Opposition to the Dahmers Request for a Bill of Review.

On November 2, 2000, the Dahmers file a response in Opposition to the IRS' response on October 20, 2000

On November 27, 2000, the District Court entered an order denying the Dahmers' Request for a Bill of Review. However, the Court failed to notify the Dahmers of their decision.

On January 24, 2001, Lee R. Dahmer contacted the Court to find out the status of the motions. He spoke to the Clerk of the Court and was told that the Court denied his Request for a Bill of Review on November 27, 2000. The Clerk acknowledged that the Court failed to notify them.

The Dahmers filed a timely "Notice of Appeal" with the United States Court of Appeals for the Eight Circuit

On February 26, 2001, prior to the filing of either brief, the United States Court of Appeal affirmed the District Court's decision based upon consideration of the original file.

PROCEDURAL AUTHORITIES RELIED UPON

The Dahmers rely upon the Internal Revenue Manual as their support and proof the "summary record of assessment" that includes their assessment, could not have been signed prior to October 1993 or the 40th cycle post week of 1993 and the IRS employees and legal counsel have had the knowledge at all times, this action was unlawful. A lawful assessment, one made according to the statutes is the life line for all actions taken by the IRS.

Without a lawful assessment, the IRS does not have the right or the power to pursue collection (a complete liquidation of the Dahmers Life) nor does the lower Court have the power or authority to enter a summary judgment against the Dahmers.

In addition to the "summary record of assessment", as proof of a lawful assessments, there are statutory requirement under IRC 6203 that include:

1. identification of the taxpayer
2. character of liability assessed
3. tax period, if applicable
4. amount of assessment

The assessment and collection of tax is a complex process governed by statutory rules and exceptions and involving various functions within the service. The IRS utilizes a very complex and complicated computer system to carry out these responsibilities. The following authorities are used to demonstrate how the fraudulent assessments have been executed via the computer system and into the Dahmers' master files.

The Internal Revenue Manual (IRM) states, *"these documents (referred to as SC Recaps in the remaining text) are produced every cycle during master file processing and, when printed, are used to journalize the transactions which are computer generated during the MF processing. The Recaps are also used as the basis for generation of the Summary Record of Assessments preparation of Form 2188, voucher and Schedule of Overpayment and Overassessments. Description of items summarized for post-journalization on SC Recaps are as follows:*

A. Assessments—Current, Deficiency and other assessments are generated during a processing cycle and are individually posted to BMF, IMF and IRAF Accounts at the MCC. All such assessments are summarized by the

service center and by class of tax. The assessment date (also referred to as the 23C date) for each processing and posting cycle is prescribed in IRM 3.30.123." (See the Internal Revenue Manual, SC Recap of Assessments, Abatements, and Other Post Journalized Transactions, 3.17.63.25.4.1)

"The BMF, IMF, and IRA Assessment date (23C date) and the first notice date is Monday of the second week following master file posting." (See Internal Revenue Manual, Cycles, Criteria, Critical Dates, 3.30.123.16.24).

"Monday is the regular established assessment date for all Masterfile Assessments...Summary Record of Assessments for Monday consists of the following certificates: Regular Assessments: Service Center Recaps – IMF, BMF and IRAF NMF Regular Weekly Assessments Daily Assessments: Prompt, quick, Jeopardy" (See Internal Revenue Manual, Summary Record of Assessments (RACS Report 006), 3.17.63.21.6)

The Internal Revenue Manual provides the following relevant definitions:

Cycle – one week's processing at the submission processing site and Martinsburg Computing Center. The cycle is expressed as a 4-digit code: the first two digits are the processing year and the second two, the processing week in that year." (See Internal Revenue Manual, Part 3 Revenue, Returns and Accounts Processing Chapter 0, General Section 273 Administration)

Cycle posted – indicates the week that posting to the master file occurred (See Internal Revenue Manual, Part 3 Revenue, Returns and Accounts Processing Chapter 0, General Section 273 Administration)

"For each Summary Record of Assessment, the audit trail is printed. This includes the Document ID, Document Locator Number or F8166 Recap number in the DLN

column and the account date: " (See Internal Revenue Manual, Summary Record of Assessments (RACS Report 006), 3.17.63.21.6)

DLN Number is a control number assigned to every return or document input through the ADP system. The DLN is used to control, identify, and locate documents processed in the ADP system. (See Document 6209)

Hold Codes are used when it is desired to prevent or delay the issuance of a refund and/or notice, such as when a particular adjustment action is cycled, or when a correction is being made to an account with the taxpayer's knowledge. (See Document 6209).

"In all non-Tefra cases decided by the Tax Court, assessment must be made within the 60-day period, after the decision of the Tax Court becomes final" (See Internal Revenue Manual, Part 35, Tax Litigation, Assessment of Tax, 35.13.10.1).

"Master File and Nonmaster File Assessments. It is important to distinguish between a master file assessment and a nonmaster file assessment. The difference between the two is that master file assessments are those which are eventually posted to the master file computer in Martinsburg, West Virginia, and appear on official transcripts of account, while nonmaster file assessments are never posted to the master file. An overwhelming majority of all assessments are master file assessments; nonmaster file assessments are relatively uncommon." (See Internal Revenue Manual, Part 35, Tax Litigation, Assessment of Tax, Master File and Nonmaster File Assessments).

"The terminals will not accept a deficiency case for closing if the ASED has expired or will expire within 60 days, unless;

A. the fraud indicator is entered in item 38 on Form 5244

B. case if closed to Appeals

C. or the ASED entered in Item 14 on Form 5344 is greater than 60 days from input date."

(See Internal Revenue Manual, [104.30]30.12, Processing Statute Cases).

With this information in mind, Ms. Osborn recaps the time barred assessments and why she concludes they were intentionally and fraudulently made, with the intent to mislead the taxpayer, the Court and anyone relying upon the information.

ARGUMENT

The District Court denied the Dahmers' Request for a Bill of Review for all the reasons stated in the United States' Response to Defendants' Request to Reopen Case (See appendix Doc #120).

The IRS advances a number of arguments in opposition to the relief requested, of which the following is a summary:

1. The Dahmers did not provide authority to demonstrate that the posting period to the IMF had any legal relevance.
2. The Dahmers did not provide evidence that the signed summary record of assessment (exhibit # 61) presented to the court below by the IRS, did not include their assessment.
3. Relief was untimely
4. The Dahmers did not provide clear and convincing evidence that the fraud prevented them from fully and fairly presenting their case.
5. There was no fraud upon the court because the Court accepted the assessment as an undisputed fact.

6. The Dahmers failed to support an adequate showing of exceptional circumstances.

ASSESSMENT PROCEDURES USED TO RECORD UNLAWFUL ASSESSMENTS

When the above procedural authorities are applied to Exhibit # 61, it is obvious that the "summary record of assessment" provided in Exhibit # 61, does not contain the assessment on the Dahmers master files, for the period at issues. The following recap was presented to the Dahmers by Victoria Osborn, their Forensic Accountant. An affidavit was submitted to the lower court in support there of.

The Dahmers Forensic Accountant, does not rely upon the "document locator number" in determining the audit trail in this case because the "document locator number" is assigned by the individual preparing the input documents and the IRS has not produced the input documents for examination. The document locator number identifies that the assessments contained in the Summary Record of Assessments were "Quick" assessments.

Exhibit # 61 consists of five (5) pages described below:

The first three pages are the "summary record of assessment" that the IRS claim includes the Dahmers assessments and therefore, prove the assessments were lawful.

Page 1 of 3 includes summary totals for "current assessments" and "deficiency assessments".

Page 2 is a continuation of the "summary record of assessment" and includes the certification and signature of the assessment officer and bares the date of June 25, 1993.

Page 3 is a continuation page and the final page to the "Summary Record of Assessment" which includes a list of the document locator numbers. It is these 3 pages that

make up the "summary record of assessment" referred to in the IRS' response to request to reopen this case. (See document 120, footnote #1).

The "summary record of assessment", by itself, does not prove a legal assessment has been made. There is a statutory requirement to identify the taxpayer, the character of the liability, the period and amout. The IRS has provided a "summary record of assessment" and other documents claiming this proves an assessment was made against the Dahmers on June 25, 1993. These documents do not contain the taxpayer's name or the tax period for the liability.

Page 4 is "Form 8166" the "Input Reconciliation Sheet" for the quick deficiency assessments in the "Summary Record of Assessments" This document is part of the audit trail for the "summary record of assessments".

Page 5 is the "document register" identifying the transaction journal number 040 930624 221.

Page 1 of exhibit # 61 shows there were 16 items processed for deficiency assessments, for individual income and page 4 (Form 8166) identifies that only 9 items were processed. These should be the same.

The amounts for tax, penalty, interest and other, on Form 8166, should match the items listed on page 1, under "deficiency assessments" for "individual inc – other. The totals on Form 8166 do not match the equivalent totals in the "summary record of assessment", indicating Form 8166 is not the correct input reconciliation for the "summary record of assessment" submitted by the IRS.

Because the assessment must also identify the taxpayer, the character of the liability and the period, we look to the individual master file for proof that the "summary record of assessment" provided by the IRS does not include the assessment made in the Dahmers' master

file.

The transaction recording the assessment to the master file for tax in the amount of $53,553.00 has a cycle posted date of 199340 or the 40th week of 1993 and the transaction date is backdated to June 25, 1993. The assessment date for all master file assessments is the second Monday following the cycle post date *(See the Internal Revenue Manual).* Based upon the authority of the Internal Revenue Manual, the "summary record of assessment" that included the assessment appearing in the Dahmers' master file could not have been signed before the second Monday following the 40th week of 1993 or October 17, 1993.

Since the master file system is programmed to comply with the law and would not allow an assessment that was time barred to post to the master file, the integrity of the system had to be violated in order to get the assessment to post to the Dahmers' master file.

This was accomplished by a transaction posted to the master file in the 26th week of 1993 that recorded the entry of the Tax Court decision, as May 19, 1993 and extended the assessment statute expiration date (ASED) to October 16, 1993. This was a false assessment date used to force the posting of a time barred assessment.

The Tax Court decision was final on May 19, 1993. The IRS must make the assessment within 60 days or they are time barred. The assessment had to be made by July 18, 1993 or could not be made at all. The individual that prepared the input documents used to enter the assessment would have calculated the ASED. The person responsible for calculating the ASED would have known they had only 60 days to make the assessment and knew the system would reject the assessment. So the IRS extends the ASED to include an additional 90 days, yet backdates the assessment to June 25, 1993. The June 25th date happens to be within

the 60 days required to make the assessment and is also the date that will appear on all notices sent by the system and the taxpayer might never find out.

It is the credibility of the IRS and their production of false documents in support of a time barred assessment, that is at issue here. Documentation produced by the IRS, during the course of this litigation, for the explicit intent to deceive the taxpayer and the Courts and gain a fraudulent judgment against the Dahmers.

The Revenue Officer responsible for preparing the input documents that falsely calculated the ASED, was acting judicially. The supervisor authorizing the assessment, was acting judicially. The legal counsel who prepared the complaint against the Dahmers have explicit guidelines to follow when verifying that assessments have been made lawfully, prior to the filing of the complaint, was acting judicially. The source documents used to make this assessment were available to legal counsel but not the Dahmers. The methods that were necessary in order for the Dahmers to uncover these fraudulent acts goes well beyond the scope of what any diligent person could accomplish. In so much as the employees of the IRS were acting judicially, it is reasonable to conclude that they were acting as Officers of the Court and their acts of deceit, misrepresentation and fraud can only be viewed as a fraud upon the court. Any other conclusion would be erroneous.

The issue in this case is whether or not the Dahmers' evidence is a showing of exceptional circumstances. Not only whether the motion would be sufficiently warranted but was the District Court's denial sufficiently unwarranted as to amount to abuse of discretion. The request filed by the Dahmers contained all the necessary averments and was substantially supported by affidavits and other acceptable evidence. The primary evidence is the master file records

that are maintained by the IRS. The IRS has not produced any evidence to rebut the Dahmers' allegations. The IRS has not denied the allegations in fact admits the posting to the master file was later than the alleged June 25th assessment date. In considering the case, the court must accept as true the undenied allegations (see *Klapprott v. United States, 335 U.S. 601, 614-15 (1949)*. Considerable documentary evidence has been provided by the Dahmers in support of their allegations.

The IRS argues that, *"even if the Dahmers' claims are accepted as true, this request for relief is untimely" and "even if it was timely, "to prevail under Rule 60(b)(3), the movant must show by clear and convincing evidence that his opponent engaged in a fraud or misrepresentation that prevented the movant from fully and fairly presenting his case," and "there was no fraud upon the Court by filing the certificates of assessment and payment and that "the Court accepted the date of assessment as an undisputed fact. It does not appear that the court, in reaching its decision to reduce the Dahmers' assessment to judgment, relied on any evidence of the assessment contained in Govt. Exhibits B and C attached to First Declaration of Carl J. Tierney (Dahmers' exhibit # 56)." The only evidence presented by the Dahmers of "fraud" is the entry of the June 25, 1993 assessment into the IRS administrative computer records (IMF) in October 1993."*

The IRS cites as their authority, *Greiner v. City of Champin, 152 F.3d 787, 789(8th Cir. 1998)* to show that "fraud upon the court" does not apply. The instant case can be distinguished from *Greiner* because if the evidence withheld at the time of trial, had been made available to the movant, the outcome would have been the same, therefore, the movant was not deprived of a fair trial. That is not so in the instant case. It cannot be disputed that if the Dahmers

had the knowledge to read and interpret the master files making it possible to demonstrate that the assessments made against them were time barred, the District Court could not have entered a summary judgment against them.

The IRS cites *Robinson v. Armontrout, 8F.3d 6,7 (8th Cir. 1993),* which cites *United States v. Young, 806 F.2d 806, 806 (8th Cir. 1986)* as authority in support that relief is only granted under a showing of exceptional circumstances. Nether case supports the IRS' position in the instant case. In Armontrout, Robinson's argument centered around "excusable neglect", the instant case does not. Young did not appeal the District Court's decision and relief from judgment under Rule 60 is not available. Both of these cases are inadequate in so far as authority in the instant case.

The Dahmers had only one tax period the IRS claimed any deficiency for and that is the entry described by the IRS as *"the only evidence presented by the Dahmers of "fraud"*. This fraud was the cause of all action taken against the Dahmers'. All collection action including the filing of this complaint were all based on fraud. The fact that there was only one assessment and that assessment was fraudulent does not reduce the degree of wrong that was done.

If the Court did not rely upon the IRS' exhibits in coming to it's decision that a lawful assessment had, in fact, been made against the Dahmers', then what did the Court rely upon?

In a telephone conference between the Dahmers, the IRS and the Court, the Court told the Dahmers their documents would not be read by the Court because anything they had to say is "presumed false" and anything the IRS had to say is "presumed true".

These statement do not relieve the IRS or its legal counsel from the responsibility of providing truthful

evidence of a lawful assessment to the Dahmers, nor does it relieve legal counsel from taking responsibility for producing fraudulent certificates and statements to the Court that these assessments were lawful. From the moment the Dahmers challenged the validity of these assessments, Legal Counsel for the IRS had an obligation to the taxpayer and the Court to insure that the assessments were made according to the law.

Legal Counsel admits the assessments were posted at a later date than the alleged assessment date (See Doc 120, pages 2 and 3), however claims that does not prove the assessment was not included in the "summary record of assessments" produced by Legal Counsel as exhibit # 61.

Legal Counsel cannot vain ignorance of the process and having no knowledge that the assessments were time barred, as the *Internal Revenue Manual, Part 35, Tax Litigation*, provides overwhelming proof to the contrary. Legal Counsel is fully aware of how "master file assessments" are made and the proof of those assessments.

The Dahmers have provided substantive evidence to prove the assessments were posted to the master file long after the alleged assessment date of June 25, 1993. Legal Counsel admits the posting to the master file was later than the assessment date and defends his actions by *stating "the Dahmers have provided no authority to demonstrate that the posting period to the IMF has any legal relevance to the assessment date for statute of limitation purposes*" (See Doc 120, page 1 footnote 1). The authorities used by the Dahmers in their Request for a Bill of Review and Defendant's Opposition to United States Response to Defendant's Request to Reopen Case is the Internal Revenue Manuals and Handbooks. The same sources utilized by IRS employees as their guide to proper procedures for carrying out the complex processes of

assessment and collection of taxes. These include authorities available to Legal Counsel, which provide profound evidence that Legal Counsel knew these assessments were unlawful at the time this complaint was filed and before he pursued the unlawful seizure of personal assets. Even now, Legal Counsel is playing games with the judicial system by forcing these fraudulent acts to reach the level of the United States Supreme Court.

The Dahmers rely upon the leading authority in "fraud upon the court", *Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238(1944)*, to demonstrate that the court has the power and the duty to reopen an action when justice so requires, regardless of the term rule (emphasized)(see quote from *Hazel-Atlas* in next paragraph). The case of *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, is a United States Supreme Court decision, a decision which is binding upon the District Courts and the Courts of Appeal. *Hazel-Atlas Glass Co.* is the leading case on fraud upon the court. The Dahmers think their case falls within the principles applied in *Hazel-Atlas Glass Co.* and thinks that the United States Courts of Appeals, for most circuits, rely upon these same principles.

The Supreme Court states, *"Federal Courts, both trial and appellate, long ago established the general rule that they would not alter or set aside their judgments after the expiration of the term at which the judgments were finally entered. This salutary general rule springs from the belief that in most instances society is best serviced by putting an end to litigation after a case has been tried and judgment entered. This has not meant, however, that a judgment finally entered has ever been regarded as completely immune from impeachment after the term. From the beginning there has existed alongside the term rule a rule of equity to the effect that under certain circumstances,*

one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry. This equity rule, which was firmly established in English practice long before fashioned to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule."

"Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

"Because of the public interest involved, equitable relief against a judgment obtained by fraud in a patent infringement suit will not be denied because the party seeking it has not exercised the highest degree of diligence in uncovering the fraud."

"That under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry."

"In the promulgation of the Federal Rules of Civil Procedure this court took notice of the fact that terms of the district court vary in length and that the expiration of the term might occur very soon, or quite a long time, after the entry of a judgment. In order to make the practice uniform Rule 60(b) provides: "On motion the court, upon such terms as are just, may relieve a party or his legal representative from a judgment, order, or proceeding taken

against him through his mistake, inadvertence, surprise, or excusable neglect. The motion shall be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. "This rule does not limit the power of a court (1) to entertain an action to relieve a party from a judgment order, or proceeding" Thus there has been substituted for the term rule a definite time limitation within which a district court may correct or modify its judgments. But the salutary rule as to finality is retained and, after the expiration of six months, the party must apply, as heretofore, by bill of review now designated a civil action to obtain relief from a judgment which itself is final so far as any further steps in the original action are concerned."

"Equitable relief against fraudulent judgments is not of statutory creation, but a judicially devised remedy fashioned to relieve hardships which from time to time arise from a hard and fast adherence to the court-made rule that judgments should not be disturbed after the term of their entry has expired."

In addition to *Hazel-Atlas Glass Co.*, the Dahmers turns to *Toscano v. Commissioner of Internal Revenue, 441 F.2d at 930 (9th Cir. 1971)* for authority which is binding to both courts. *Toscano* applies the principles in *Hazel-Atlas* and the United States Supreme Court's construction of the phrase, "fraud upon the court", to a tax dispute between a taxpayer and the IRS.

"The distinction between "fraud" on the one hand and "fraud on the court" on the other is by no means clear, and most attempts to state it seem to us to be merely compilations of words that do not clarify. Mr. Moore has made a valiant attempt at definition in the portion of his treaties that deals with Rule 60(b), F.R.Civ.P., which uses the phrase "fraud upon the court. He discusses the problem

at length and concludes as follows(p.512-13):

"Fraud upon the court" should, we believe, embrace only that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Fraud, inter partes, without more, should not be a fraud upon the court, but redress should be left to a motion under 60(b)(3) or to the independent action."

"Because there is here no charge of corruption of the court itself, we do not find the foregoing very helpful. What is meant by "defile the court itself"? "This court and others have also attempted definitions.... we said that "it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision."

"The leading case dealing with fraud on the court is Hazel-Atlas Glass Co. v. Hartford-Empire Co., 1944, 322 U.S. 238,. We think that the case before us falls within the principles there applied, whatever words may be used to describe them."

"When a deficiency was assessed, and Toscano petitioned the Tax Court for redetermination, he carried the fraud into the Tax Court. Thus he was continuing to defraud the Commissioner, and he was continuing to attempt to subject Miss Zelasko to a liability that was not hers. But he was doing more; he was also perpetrating a fraud upon the Tax Court, which culminated in a determination of joint deficiencies against Miss Zelasko as well as himself. This, we think, was as much a fraud on the court as was the use of the spurious article in the Court of Appeals in Hazel-Atlas".

The Ninth Circuit firmly adopts the position that

even though there was no charge of corruption to the court itself, "fraud upon the court" was founded based upon the U.S. Supreme Courts decision in Hazel-Atlas, due to an unconscionable plan and the courts influence by the fraud.

The Dahmers think the issues in the case of *Toscano* and *Hazel-Atlas*, portray the issues in the instant case.

"In Toscana taxpayer's claim that person with whom she had filed a joint return was not her husband and that her signatures on the joint returns were either forged or were placed there by her under duress alleged two frauds, one upon the Commissioner and one upon taxpayer, and when person filing the returns petitioned tax court for redetermination of joint deficiencies against taxpayer as well as himself, he committed "fraud on the court" and tax court should have exercised its power to grant leave to taxpayer to file motion to vacate its decision.

The Dahmers were and still are at an unfair and inequitable disadvantage because the documents needed to prove his Government is wrong, have been controlled by his Government.

"Where the parties deal at arms length, there is no duty of disclosure where the facts are equally within the knowledge of both parties; but if the facts are peculiarly within the knowledge of one party, there may be a duty of disclosure under particular circumstances." *(See C.J.S., Fraud S 16b; 23 Am.Jur., Fraud and Deceit S 80).*

Legal Counsel for the IRS does not have clean hands. The authority relied upon is the Internal Revenue Manual, Part 35, Tax Litigation.

The Revenue Officers involved in the assessing and collection of tax are acting judicially and are considered officers of the court.

Did the Revenue Officers and IRS Legal Counsel have an obligation, a duty and responsibility to these

taxpayers and are their actions willful and intentional and rise to the level of fraud to warrant re-opening this case? The Dahmers think yes.

The Dahmers rely on the dictionary for additional authority to define deceit, misrepresentation and fraud as follows:

"*Misrepresentation is an intentionally or sometimes negligently false representation made verbally, by conduct, or sometimes by nondisclosure or concealment and often for the purpose of deceiving, defrauding, or causing another to rely on it detrimentally.*

"Deceiving is causing to accept as true or valid that which is false or invalid and fraud is defined as "any act, expression, omission, or concealment calculated to deceive another to his or her disadvantage; specif: a misrepresentation or concealment with reference to some fact material to a transaction that is made with knowledge of its falsity or in reckless disregard of its truth or falsity and with the intent to deceive another and that is reasonably relied on by the other who is injured thereby." (See Webster's Dictionary of Law.)

Obligation is a duty arising from law, contract, or morality, a relationship that binds one party to a performance.

An officer is one charged with administering or enforcing the law, one who holds an office of trust, authority.

Duty is an obligation imposed by law to conduct oneself in performance with a certain standard to act in a particular way. Every definition here applies to the conduct of the IRS and it's Legal Counsel whether in the courtroom or not.

Did the Revenue Officers and employees have an obligation, a duty and responsibility to these taxpayers and are their actions willful and intentional and rise to the level of fraud to warrant re-opening this case? The Dahmers think yes.

A Revenue Officer of the Internal Revenue Service has the responsibilities and duties as stated in the "Published Standards". Furthermore, Revenue Officers are acting judicially.

"A revenue officer has the responsibility to protect taxpayer rights while providing responsible service and assistance to taxpayers. The incumbent ensures the highest level of public trust be educating and promoting voluntary compliance in accordance with the tax laws and regulations."

"Provides customer service by explaining the taxpayer's rights and IRS policies and procedures. Provides instructions and analyzes complex or unusual issues presented by taxpayers, practitioners and IRS employees. Service is based upon interpretation and application of IRM policy and procedures, court decisions, state and local laws and various Titles of the United States Code."

"Collects delinquent accounts, secures delinquent tax returns, conducts tax investigations, counsels taxpayers on their tax filing and paying obligations. Provides guidance and service on a wide range of financial problems to assist the taxpayer toward a positive course of action."

"Files and releases Federal tax liens. Perform credit analysis and evaluations to complete such actions as discharge applications, collateral agreements, redemptions, seizures and sales, nominee liens, civil suits, currently not collectible accounts, offers in compromise, and trust fund recovery penalties"

"The knowledge required is a Abroad, in-depth knowledge of taxpayer rights, Internal Revenue Code, and IRM policies and procedures and IRS organizational structure and functions."

"Comprehensive knowledge of business organization and commercial practice. The ability to analyze the operations, financial condition, and profitability

of taxpayers including the valuation of large, unusual, valuable, or difficult to dispose of assets."

"Knowledge of a wide range of collection, investigative and analytical techniques and the ability to apply such techniques to the analysis of extremely complex business and financial matters."

"Knowledge of a wide range of business laws and practices, judicial processes, laws of evidence, interrelationship between Federal and state laws, and the ability to understand the contents and effects of various complex legal instruments."

IRS employees have a large number of tools available to insure they carry out their responsibilities, according to the law. The primary source is the Internal Revenue Manual (IRM).

The following authority is taken from the Internal Revenue Manual, giving clear guidance in the procedures utilized by the IRS.

In the *Collection Quality Measurement System (CQMS) Handbook, Chapter 2, [5.13] 2.2.3, Item 21: Verification of the Accuracy of the Tax Liability*

10 *CQMS Standard: Was the accuracy of the tax liability verified when required?*

20 *Definition: Was the accuracy of the tax liability verified at anytime during the case when a taxpayer questioned the accuracy of the stated balance due or the underlying liability? Examples might include possible unposted payments, taxes discharged in bankruptcy, substitute for return/IRC 6020(b) assessment, audit reconsideration, non-master file case, trust fund recovery penalty, "innocent spouse" situation, other penalties and interest.*

30 *To meet this CQMS standard, the revenue officer must document in the case history that the accuracy of the tax liability has been*

verified. Further, anytime during the investigation, when a taxpayer questions the accuracy of the balance due or underlying tax liability, the file should reflect that appropriate research was conducted in relation to information presented by the taxpayer in support of his or her query. Verification of liability must be documented even when it appears that the taxpayer is questioning the liability simply to delay.

The IRM makes it clear that the Revenue Officer has an obligation to the taxpayer to verify the accuracy of the tax liability. The Revenue Officer is acting judicially.

To demonstrate the Dahmers rely upon Toscano (see previous quotes) and U.S. v. Tweel, 550 F.2d, 297 (5th Cir. 1977), and White v. Union Producing, 140 F.2d 176 at 178 (5th Cir. 1946).

Tweel was convicted of conspiring to defraud the United States by obstructing the lawful functions of the Internal Revenue Service.

The theory on which the motion to suppress was based is that Miller's microfilming of appellant's records constituted an illegal search in violation of the Fourth Amendment because appellant's consent was obtained through deception. This Court agrees that appellant was grossly deceived and the motion should have been granted.

The District Court's findings were that the Justice Department requested the IRS to investigate the appellant, a revenue agent was assigned the task, and the accountant asked the agent whether or not a special agent was involved and received a negative response which was at that point a true statement. The trial judge subsequently stated:

If it is deception not to advise at the outset that you were sent there or requested to be there by the Justice Department when asked the question whether there is a special agent involved, then the Court is wrong.

Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would intentionally be misleading. We cannot condone this shocking conduct by the IRS. Our revenue system is based on the good faith of the taxpayers and the taxpayers should be able to expect the same from the government in its enforcement and collection activities.

From the facts we find that the agent's failure to appraise the appellant of the obvious criminal nature of this investigation was a sneaky deliberate deception by the agent under the above standard and a flagrant disregard for appellant's rights.

The silent misrepresentation was both intentionally misleading and material. Any findings to the contrary under the facts of this case are clearly erroneous.

Miller's response, although on the face of it true, misled appellant to such a degree that his consent to the "search" must be vitiated by the agent's silence concerning the origin of this investigation.

During oral argument counsel for the government stated that these procedures were "routine". If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this the "routine" it should be corrected immediately."

REASONS FOR GRANTING THE WRIT & CONCLUSION

The United States Court of Appeals for the Fifth Circuit established, years ago, their principles on the subject of fraud, in *White v. Union Producing, 140 F.2d 176 at 178, (5th Cir 1946),* stating that

"Fraud vitiates everything it touches" it is difficult to define, there is no absolute rule as to what facts constitute fraud, and the law does not promote one."

Deception, fraud and misrepresentation were the primary vehicles used, by the IRS, to carry out it's unconscionable plan.

The Dahmers have demonstrated, that intervention by the United States Supreme Court is the only remedy, available to them. They have sought relief through every potential administrative remedy within the IRS, they sought relief from the U.S. District Court and the U.S. Court of Appeals. They have provided evidence, to the Court, to adequately, support an independent action for relief.

With these definitions and authorities in mind and the case law presented, the Dahmers believe that every element of fraud, deceit and misrepresentation demands the intervention of the United States Supreme Court to insure that justice prevails.

Lee Ronald Dahmer
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APPENDIX A
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Case No. 01-1363

UNITED STATES OF AMERICA,
Appellee

versus

LEE RONALD DAHMER and
JUDITH DAHMER
Appellants

JUDGMENT

Upon consideration of the original file in the United States district court, the order of the district court refusing to re-open the case is summarily affirmed. See Eighth Circuit Rule 47A(a).
(5361-010199)

February 26, 2001

Order Entered at the Direction of the court

Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B
IN THE UNITED STATES DISTRICT COURT
For The WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

Civil Action 97-5122-CV-SW-4

UNITED STATES OF AMERICA,
Plaintiff

versus

LEE RONALD DAHMER and
JUDITH DAHMER
Defendant

ORDER

ORDER DENYING DEFENDANTS' REQUEST FOR A BILL OF REVIEW

Comes now the Court herein and having fully considered Defendants' Request For a Bill of Review (Doc. #338) in which defendants Lee Ronald Dahmer and Judith Ann Dahmer request the reopening of this case on alleged newly discovered evidence of fraud, DENIES said request to reopen for all of the reasons stated in the United States' Response to Defendants' Request to Reopen Case (Doc. #120)

s/W. Gary A. Fenner, Judge
United States District Court

DATED: November 27, 2000

APPENDIX C
IN THE UNITED STATES DISTRICT COURT
For The WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

Civil Action 97-5122-CV-SW-4

UNITED STATES OF AMERICA,
Plaintiff

versus

LEE RONALD DAHMER and
JUDITH DAHMER
Defendant

UNITED STATES' RESPONSE TO DEFENDANTS' REQUEST TO REOPEN CASE

Defendants Lee Ronald and Judith Ann Dahmer seek to reopen this case in which a final judgment was entered on July 22, 1999. The U.S. Court of Appeals for the Eighth Circuit denied the Dahmers' appeal on August 15, 2000. The Dahmers seek to reopen the case due to newly discovered evidence of fraud. This claim of fraud is based upon their assertion that the assessment by the IRS of additional federal income tax for the 1987 tax year did not take place on June 25, 1993 as established in this case, but instead took place in October 1993. The Dahmers' assertion is based upon the interpretation of their "forensic accountant" that the transaction was not posted to the IRS Individual Master File (IMF) until the 9340 period. 1 Based upon the fact that the assessment was not posted to

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1 The date that the Dahmers' assessment was posted is irrelevant. Posting an assessment to the IRS computerized record system (the IMF) has nothing to do with the legal determination of the date of assessment. The date of assessment is the date that an authorized official signs a summary record of assessment containing the taxpayer's assessment. Treas. Reg. 301.6303-1. The Dahmers have provided no authority to

the Dahmers' IMF until October 1993, the Dahmers allege that IRS employees actually made the assessment in October 1993and then back-dated it to June 25, 1993. They further accuse the United States of fraudulently presenting documents relating to their assessment by producing records that show that the 1987 tax was assessed on June 25, 1993.

Even if the Dahmers' claims are accepted as true, this request for relief is untimely. A motion under Fed.R.Civ.P. 60(b)(3) for relief from an order because of fraud, misrepresentation or other misconduct of an adverse party shall be made "not more than one year after the judgment, order, or proceeding was entered or taken." The Order granting the United States' motion for partial summary judgment which reduced the assessment for the Dahmers' additional 1987 federal income tax to judgment was entered on March 31, 1999. This request for relief, over eighteen months later, is untimely under Rule 60(b).

The Dahmers' motion for relief would not be proper under Fed.R.Civ.P. 60(b)(3) even if it was timely. "To prevail under Rule 60(b)(3), the movant must show by clear and convincing evidence that his opponent engaged in a fraud or misrepresentation that prevented the movant from fully and fairly presenting his case." Greiner V. City of Champin, 152 F.3d 787, 789(8th Cir. 1998). The only evidence presented by the Dahmers of "fraud" is the entry of the June 25, 1993 assessment into the IRS administrative computer records (IMF) in October 1993. Given the fact that an assessment occurs upon the date that summary assessment record is signed (Treas.Reg. 301.6303-1), the fact that it may have been entered into the IMF at a later time provides no evidence of fraud. No other evidence has been presented to support the dahmers' grave allegations of fraud and deception on the part of the IRS and Department of Justice.

Further, the Dahmers received the IMF records they rely upon for their fraud claim in 1995, several years prior to this case.

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demonstrate that the posting period to the IMF has any legal relevance to the assessment date for statute of limitation purposes. Additionally, the Dahmers have failed to produce any evidence that the signed summary record of assessment contained in their Exhibit # 61 does not contain their tax assessment.

Yet they did not approach their "forensic accountant" until August 2000, over three years after the filing of this case. Given their discovery requests for information about the assessment (as evidence in their motion at page 10), the Dahmers clearly had concerns about the validity of the assessment against them while this case was open. During this case, the Dahmers had all the information that this motion is based upon. They could have raised this issue, challenging the validity of the assessment, at an appropriate time during the case instead of coming in now, long after the fact, and seeking to disturb a final order. They have failed to demonstrate "due diligence" as required by Fed.R.Civ.P. (60(b)(2).

The Court's March 31, 1999 Order granted the United States' motion for summary judgment based upon the fact that the Dahmers' counsel failed to raise any sufficient issue of material fact. Paragraph 2 of the statement of uncontroverted facts in the United States' motion for partial summary judgment (filed with this Court on October 13, 1998) stated that the assessment of the Dahmer's 1987 federal income tax took place on June 25, 1993. When the Dahmers (through counsel) finally responded to this motion on February 10, 1999, they failed to contest any of the statement of material facts contained in the United States' motion. Under Local Rule 56.1, all facts set forth in a movant's statement of uncontested facts are deemed admitted unless specifically controverted. The Court accepted the date of assessment as an undisputed fact. It does not appear that the Court, in reaching its decision to reduce the Dahmers' assessment to judgment, relied on any evidence of the assessment contained in Govt. Exhibits B and C attached to First Declaration of Carl J. Tierney (Dahmers' exhibit # 56). Therefore, even accepting the Dahmers unfounded allegations of fraud as true, there was not fraud upon the Court by filing the certificates of assessment and payment. The June 25, 1993 assessment date was admitted by the Dahmers. Any hypothetical fraud would have been against the Dahmers, as a party, and subject to the time limits of Fed.R.Civ.P. 60(b)(3).

Fed.R.Civ.P.60 allows relief from an order, but such a motion is generally looked upon with disfavor given the necessity of finality of litigation. Reopening a case under Rule 60(b) is "extraordinary relief which may be granted only upon an adequate showing of exceptional circumstances." Robinson v. Armontrout, 8

F.3d, 6, 7 (8th Cir.1993), citing, United States v. Young, 806 F.2d 805, 806 (8th Cir. 1986). The Dahmers have failed to demonstrate that they are entitled to such extraordinary relief. Their request to reopen this case should be denied.

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DOCUMENT # 120